

Exhibit O

HIGHLY CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

United States of America, *et al.*,

Plaintiffs,

v

Google LLC,

Defendant.

Case No. 1:23-cv-00108

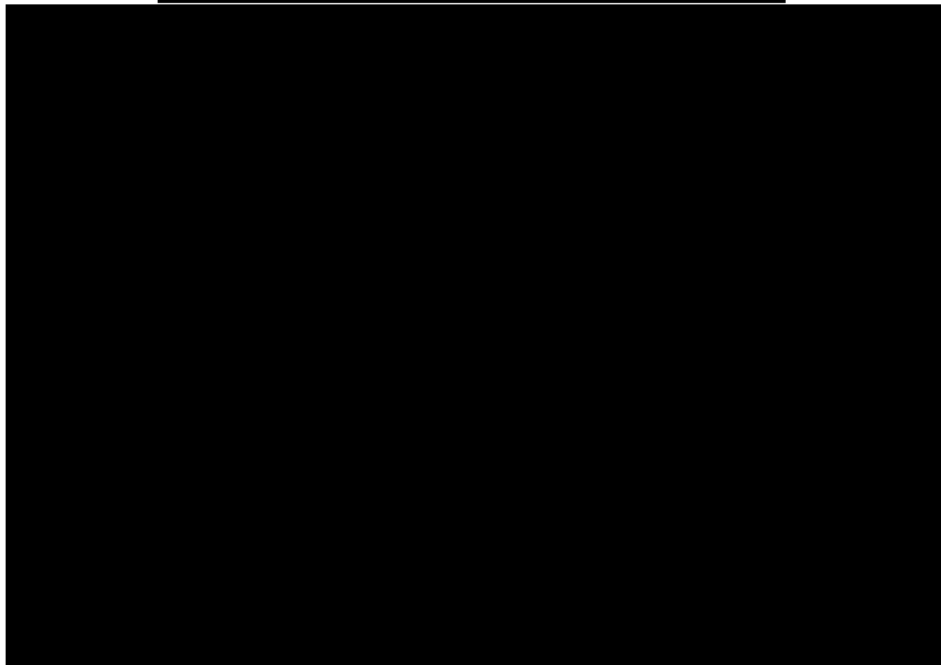
HON. LEONIE H. M. BRINKEMA

EXPERT REBUTTAL REPORT OF
WAYNE D. HOYER, PH.D.

FEBRUARY 13, 2023

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FIGURE 4:



:
:

III.A.4. Professor Simonson's Final Sample May Not be A Representative Sample of U.S. Advertisers

65. 
 106 



¹⁰⁶ Simonson Report, Section III.B., ¶ 33.

Lee Initial Report, Section IV.F., ¶ 388.

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[REDACTED] 107 [REDACTED]
 [REDACTED]
 [REDACTED]

66. [REDACTED]
 [REDACTED] 108 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED] Consequently,
 Prof. Simonson cannot draw conclusions about U.S. advertisers from his surveys. As a well-known treatise on the use of surveys in litigation notes, when “[t]he sampling frame excludes part of the target population...the survey’s value depends on the proportion of the target population that has been excluded from the sampling frame and the extent to which the excluded population is likely to respond differently from the included population.”¹⁰⁹ Furthermore “[i]f the sampling frame does not include important groups in the target population, there is generally no way to know how the unrepresented members of the target population would have responded.”¹¹⁰

67. [REDACTED]
 [REDACTED]
 [REDACTED]

a. [REDACTED]
 [REDACTED]
 [REDACTED]

¹⁰⁷ Simonson Report, Section III.B., ¶ 34.

¹⁰⁸ See Simonson Report, Appendix I; see also, [REDACTED]
 [REDACTED]

¹⁰⁹ Shari Seidman Diamond, “Reference Guide on Survey Research,” in *Reference Manual on Scientific Evidence*, 3rd ed. (Washington, DC: The National Academies Press, 2011), at 378.

¹¹⁰ See, Shari Seidman Diamond, “Reference Guide on Survey Research,” *Reference Manual on Scientific Evidence*, 3rd ed. (Washington, DC: The National Academies Press, 2011), 379.

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157

83.

158

84.

¹⁵⁷ Simonson Report, Section IV.B.2., ¶ 81.

¹⁵⁸ See Itamar Simonson and Ran Kivetz, “Demand Effects in Likelihood of Confusion Surveys: The Importance of Marketplace Conditions,” in *Trademark and Deceptive Advertising Surveys: Law, Science, and Design*, (Chicago: American Bar Association, 2012), 243–259, at 245–246 (“Even if respondents misinterpret what the experimenter has in mind, the mere fact that many study participants form similar beliefs as to what is expected of them may bias the results. That is, demand effects can have a significant impact on research findings whether or not they conform to any particular research hypotheses or study objectives”).

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] 159 [REDACTED]

[REDACTED]

[REDACTED] 160

85. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] 161

III.C. [REDACTED]

86. A critical feature of a reliable survey, one that can provide insights into behavior, is that the respondents were attentive and responded carefully, ensuring their responses reflect their beliefs, actual behavior, or probable behavior in a hypothetical scenario. [REDACTED]

[REDACTED]

[REDACTED]

¹⁵⁹ Simonson Report, Exhibit 1.

¹⁶⁰ Simonson Report, Exhibit 37.

¹⁶¹ Simonson Report, Section IV.B.2., ¶ 81.

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121.

[REDACTED]

[REDACTED] Without details like demographics, work responsibilities, or job titles, it is not possible to determine the representativeness of the sample, the relevance of the respondents' feedback or the validity of the conclusions drawn from the pretests.



Wayne D. Hoyer, Ph.D.

Date: February 13, 2024

Expert Rebuttal Report of Wayne Hoyer (February 13, 2024)--Errata

Page	Paragraph	Footnote	Original	Corrected	Reason
43		137	[REDACTED]	[REDACTED]	Typo
52	83	.	[REDACTED]	[REDACTED]	Typo
54	89		[REDACTED]	[REDACTED]	Typo
56	92	.	[REDACTED]	[REDACTED]	Typo
57	95	.	[REDACTED]	[REDACTED]	Typo
59	97		[REDACTED]	[REDACTED]	Typo

Wayne Hoyer